1951.

Examined.

File No. S. Dharwar 1/51.

Legal DEPARTMENT

A BRANCH

Subject:— Suits: Dharwar.

In the Court of the C.J. (S.D.), Dharwar -

Civil Suit No. 248 of 1949.

Ramchandra Nilkanth Deshpande. - Plff.

Vs.

The State of Bombay & anr. - Defts.

Re: For a declaration that the Suit lands and the patilki Rights have lapsed to Govt. and the plaintiff is entitled to claim them and for consequential injunction.

File No. S. Dwr. 1/51.

Std. Sectt. Slip 24-B

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Suits Dharwar

C.S. No. 248 of 1949.

Ramchandra Nilkanth Deshpande

V/s

State of Bombay and another

Re: For a declaration that the suit lands and the patilki Rights have lapsed to Govt. and the plff. is entitled to claim them and for consequential injunction

1 – 36.

English translation of the Plaint. L.C. 248/1949.

In the Court of the C. J. S. D. Hubli.

Plff :- Ramachandra Nilkantha Deshpande of
Savikeri Taluka Hangal.

Vs.

Deft :-1. Mallappanaik Channappanaik Naikar of
Savikeri Tal. Hngal. etc.

2. Province of Bombay.

Claim Rs. 65/-.

In this the Plffststés as follows :-

1. Suit properties are the Kadam Patilki Judi lands of Savikeri an Inam village in Hagal Taluka. They are :-

(a) R.S.No.	A - G.	Asstt.	Total judi of these lands amounts
9	4-24	6-0-0	to Rs.90/10/8 the difference
16	7-22	23-0-0	being only Rs.1-13-4.
24	5-36	18-0-0	These lands should be
60	6-38	12-0-0	treated as Khalsa valued
68	1-15	5-0-0	at Rs.5000/- only.
73	8-35	24-0-0	
80	3- 8	2-0-0	
119	6-32	2-8-0	

(b) A tiled roofed house and a backyard in the same village having the boundaries as follows :-

To the east :- Plff's Open space.
To the west :- Plff's forest.
To the North Plff's water pond.
To the south Plff's backyard.

It is valued at Rs. 150/-.

2. The above said properties are situated in the Inam village of Savikeri. The suit lands were originally the Watan lands of Puttangouda the adoptive father of the deceased Channappagouda who was the Kadim Patil of the village. The house and the back yard were being used by that Puttangouda for his residence. Channappagouda died in 1937 issueless. The suit properties and the Patilki Watan was without heirs and so they were forfeited to Government. The Government ought to have given the lands to Nilkantha Kallo Deshpande.

father of the Plff after charging full assessment and the house and the backyard for his residence and wahiwat as he was the full Inamdar of the village and as per custom of the Inam village. Even the Patilki work ought to have been entrusted to the Inamdar. But the Prant Officer II Dn. held the deft 1 to be the legal heir of the deceased Channapgouda and as per his order his name came to be entered as heir on 10-6-37 in the village records. The order of the Prant Officer was confirmed by the Collector on 7-10-39. As a matter of fact deft is not the legal heir of the deceased Channapgouda, the Patil of the village. Before the deceased Channapgouda was adopted to the Savikeri/Patilki family the deft 1 was born to him in Tallur in Soraba Taluka in the Naikar family. Therefore he has no rights in his father's adopted family. The Plff and his deceased father are entitled to the Patilki-right of the village and to the suit properties Hence this suit for declaration that the order of D1 is ltra vires and for an injunction to deft 2.not to assert his right on the strength of that order.

3. Cause of action arose on 17-10-39.

4. Plff has a right to file this suit, asneither the Prant Officer nor the Collector has anv power to restore the forfeited lands to deft 2. The right of granting lands to Parai (persons not belonging to the Watan family) vests only the Provincial and Central Government; hence the order is ultra vires and the Plff is entitled to get the properties in this suit.

5. The suit is valued for declaration and injnction at Rs.65/- for the purpose of court fees pleader's fees and for jurisdiction.

6. This court has jurisdiction to try this suit. Deft 2 is added as party as the suit properties are in his possession. Notice under Sec. 80 C.P.C. hasbeen given. The appeal by this Plff to the Collector has been dismissed on 9/8/49 and there is no bar under the Rvenue Jurisdiction Act. The suit has been filed as Govt. lands as the lands have been lapsed to Govt. and as they are custodia legis.

7. Plffprays :- (a) It should be declared that the suit lands and the Patilki ~~xxxxx~~ rights have been lapsed and this Plff is entitled to them and deft 1 be restrained from asserting his rights to these lands.

(b) Alternatively if it is held that possession also should be asked in ~~thisxx~~ suit then Plff be permitted to amend the plaint. The costs of this suit be awarded from deft 1.

(c) Any other relief to which the Court~~x~~ thinks fit may also be awarded.

10-6-1949.

Presented on 12-11-49.

Sd. S.N.Kulkarni.

Pleader.

Hubli,

1-7-50.

Sub Govt. Pleader.

Draft w.s. L.C.248/49.

In the Court of the Civil Judge, S.D.,

Hubli.

Plaintiff :- Ramchandra Nilkantha Deshpande of

Savikeri Tal. Hangal.

Vs.

Defts:- 1. Mallappanaik Channapanaik Naikar of

Savikeri Tal. Hangal.

2. The Province of Bombay.

In this the w.s. of the deft 2 is as follows :-

1. The plaint allegations are not admitted by this deft.

2. The Plaintiff has not given avalidx and legal notice as required bv Sec. 80 C.P.C.before filing this suit.

3. The suit isbarred bv the Revenue Jurisdiction Act.

4. The suit is barred bvlaw of limitation.

5. The suit is barred bv estoppel and acquiscence, since Plff has knowingly kept quite from 1937 to 1947.

6. The suit is barred by res judicata. The Plff's predecessor once ~~agitated~~ agitated the matter and an order was passed in 1939 against which he has not appealed or taken further steps in the matter. He cannot reagitste the same matter again by this suit.

7. ~~This suit for declaration~~ Thecause pf action has not arisen at all for this suit. The Plff has wrongly mentioned the same.

8 This suit for declaration without asking for real consequential relief of possession cannot lie.

9. Proper court fee is not paid and the suit is notproperly valued for pleader's fees and jurisdiction.

10. The order of the Collector is perfectly legal and valid and it is not ultra vires.

11. The Plff has unnecessarily and knowingly dragged this deft to court; hence compensatory

awarded to this deft.

12. It is not admitted that Plff has a right to the Watan property or to the Watan-rights.

13. Plff's case that deft wasborn prior to the date of adoption of his father is not admitted by this deft.

Hence Plff's suit be dismissed with costs.

Hubli,
1-7-50.

Sub-Govt. Pleader.

Please type 5 copies
7/11

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Dharwar Civil Suit No. 248/1949.

This is a suit for a declaration that the suit lands and the patilki rights have lapsed and the plaintiff is entitled to claim them and for an injunction restraining Govt. from asserting their rights to these lands.

The suit is defensible.

The defence of the suit may be sanctioned on the lines of the accompanying brief.

7/11

A.S.R.

7/11

No. 15737

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Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 11th November 1950.

Subject:- Dharwar Civil Suit no. 248 of 1949

MEMORANDUM.

The District Government Pleader, Dharwar, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the written statement~~ is sent herewith in advance.

Papers of the case in one file received from the Collector accompany.

9/c

For Remembrancer of Legal Affairs.

The District Government Pleader,
Dharwar.

kam. 20.4.50.

Submitted for signature
SNH.
8/11

A Sofa.

Issued.
11/XI.

GPSD no. 17780 B
13-12-50 sent to
Brno
urb.

Await form Cofrici-

18/12

Suits :

Dharwar.

For a declaration that the suit lands and the patilki rights have lapsed to Government and the plaintiff is entitled to claim them and for consequential injunction.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 17730.

Bombay Castle, 13th December 1950.

Endorsement from the Collector of Dharwar No. LAW. 522, dated 13th July 1950—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), DHARWAR.

Civil Suit No. 248 of 1949.

Ramchandra Nilkanth Deshpande ... ... Plaintiff;

versus

The State of Bombay and another ... ... Defendants.

Memorandum to the District Government Pleader, Dharwar, No. 15737, dated 11th November 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

To

*The Revenue Department,
*The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

* With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

Submitted after issue
file in S. Dharwar/51

A Solo.

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DHARWAR CIVIL SUIT No. 248 OF 1949.

Chronological Statement of Facts.

1. This is a suit for a declaration that the suit lands and the Patilki rights have lapsed to Government and the plaintiff is entitled to claim them and for an injunction restraining defendant No. 1 from asserting his rights to these lands.

2. Suit properties constitute Kadim Patilki Watan of Savikeri village in Hangal Taluka. One Puttangouda was the holder of the Patilki Watan and the lands appertaining thereto, in Savikeri village. He adopted Channappagouda and died some years after. Channappagouda, the last male holder, died in 1937. On his death, defendant No. 1 was recognised as patil and the Patilki lands were ordered to be entered in his name in the Huq Register by the Prant Officer II Division on 10th June 1937. This order was confirmed by the Collector on 7th October 1939.

3. The plaintiff's father the holder of an entire Inam Village Savikeri applied in 1937 to the Prant Officer for restoration of this Patilki Watan and the lands, alleging that defendant No. 1 was not the legal heir to the deceased and so the Watan has lapsed, but his application was rejected. He then preferred an appeal to the Collector but his appeal was dismissed under order No. W.P.P. 701 of 11th August 1942, directing the appellant to get his rights established in a civil court. In 1946, the plaintiff re-agitated the matter reiterating the same request. The Prant Officer refused to restore the Patilki lands and the Watan to the plaintiff under his order No. 553, dated 4th September 1948. This order was confirmed by the Collector on appeal under order No. W.T.P. 151, dated 9th August 1949. The plaintiff then preferred a revision application to the Commissioner, Southern Division, but it was rejected.

4. On 10th June 1949, the plaintiff gave a notice of suit under section 80 of the Civil Procedure Code and on 12th November 1949 he filed this suit in the Court of Civil Judge, Senior Division, Hubli.

Grounds of Defence.

1. *Jurisdiction.*—The suit relates to Patilki Watan and the lands assigned therefor. Civil Court's jurisdiction to entertain such suits is barred by section 4 clause (*a*) of the Bombay Revenue Jurisdiction Act, 1876. Consequently the Plaintiff's suit is not maintainable.

2. The plaintiff seeks a declaration regarding the Patilki rights of the village Savikeri. Defendant

No. 1 is recognised by the Collector as the sole representative Watandar of the Patilki Watan in the village. Section 25 of the Bombay Hereditary Offices Act constitutes Collector as the sole judge for determining what persons shall be recognised as representative Watandars. Reading section 25 with section 24 of the Act, it clearly follows that the Civil Court's jurisdiction is barred in these matters. (*Vide* Chinte Abaji *v.* Laxmibai I.L.R. 2 Bom. p. 375). In view of the provisions of section 25 of the Bombay Hereditary Offices Act, the plaintiff's suit for declaration is not competent.

3. The suit as framed is barred under proviso to section 42 of the Specific Relief Act, in as much as he has not asked for possession of the suit properties, which he could have done, if he was legally entitled thereto. The word "further relief" in section 42 of the Specific Relief Act means recovery of possession and nothing else. Consequently, the plaintiff's suit is not tenable.

4. *Limitation*.— The order rejecting the plaintiff's application was passed in 1937. The suit, filed in 1949, is, therefore, barred under article 14 of Schedule I to the Limitation Act. The plaintiff's reagitating the same matter in Revenue Courts will not give to him a new starting point of limitation. The suit is, therefore, barred under article 14 of Schedule I to the Limitation Act.

5. *Notice*.— The plaintiff's suit is barred under section 80 of the Civil Procedure Code. The notice given by the plaintiff is not sufficient in law for the following reason, viz. :—

(1) The reliefs claimed in the plaint are different from those mentioned in the notice.

The notice was not a proper notice of suit as at present framed. The provisions of section 80 are imperative and mandatory. Non-compliance therewith deprives the Court of its jurisdiction and the plaint stands to be rejected under order VII Rule 11 (*d*) Civil Procedure Code.

6. The plaintiff claims the Patilki Watan and the lands on the ground that he was the holder of the entire village. The plaintiff in para 1. of the plaint has described the suit properties "as Kadim Patilki Judi Lands". If the suit properties and the Patilki Watan are admittedly Kadim grants, the Inamdar of that village cannot claim this Watan and the lands assigned therefor if lapsed. In the case of Kadim grants, the reversionary rights of Lapsed Watans, vest in Government and not in the Inamdar. The plaintiff has, therefore, no "locus standi" to claim this Patilki Watan and the properties. There can be no custom contrary to Law. The rights of the parties to claim the lapsed Kadim Watans will be governed by the provisions of Law and not by custom if any. The plaintiff's suit is, therefore, not tenable.

7. The plaintiff has laid an undue stress on the ground that defendant No. 1 could not be legally recognised as legal heir to the deceased Channappagouda. The plaintiff claims the suit properties not on the ground of his close relationship with the deceased Channappagouda, but as the Inamdar claiming a lapsed Watan. The plaintiff is also not a Watandar of the same Watan. Under the circumstances, it is none of his concern to see whether defendant No. 1 is born before or after the adoption of his father. The question of recognition or otherwise of defendant No. 1 is between Government and defendant No. 1. In fact defendant's birth before or after the adoption of his father is not at all material for the decision of this case. The Collector exercising his powers under section 25 has recognised defendant No. 1 after full inquiry as the R. W. Watandar in place of the deceased Channappagouda. This order is legal and *intra vires*. The plaintiff has no right to challenge this order. This is not a case of lapsed Watan. The plaintiff's suit is, therefore, not tenable.

For these reasons, it should be contended that the suit fails and should be dismissed with costs.

Copy was applied for on the Fifth October 1955 in person.
(5)

Clerk of the Court.

Copy was ready for delivery on the October 1955.
Decree signed on 17-10-1955. ( )

Clerk of the Court.

Copy was

Clerk of the Court.

Received on 10-5-1949.

Registered on 14-7-1949.

Decided on 30-9-1955.

Duration 6 years, 2 months and 16 days.

In the Court of the Civil Judge, Senior Division, Hubli,
at Hubli. Ex. K. 143.
L. C. Civil Suit No. 248 of 1949.

Pleaders :-

Sri.S.N.Kulkarni. 1. Ramachandra Nilakanth Deshpande, age 46, occupation Watani-wahiwat and agriculture, residence Inam-village Savikeri, Taluka Hanagal.....Plaintiff.

Against.

Sri.Krishnaswami. 1. Mallappanaik father Channappanaik Naikar, (now calls himself as Channappagouda Patil of Savikeri) age 43, occupation Patilki, of Savikeri, Taluka Hangal.

Mathad. 2. The Province of Bombay.

(3) Veeranagouda adoptive father Chanabasangouda Patil Balehalli Taluka Hangal, age 42, deceased by his heirs.

Deleted. 3A. Mallikarjun, age 10) Veerappagouda Patil of Balehalli
Deleted. 3B. Manjunath, age 7) Taluka Hangal.
.....Defendants.

Claim Rs. 871-4-0. For jurisdiction Rs. 5150/-.

The Plaintiff sues to recover possession of the suit property, for future mesne profits and for costs of the suit from the Defendant No.1. His case is that the suit properties are situated in Savikeri village in Hanagal taluka and that Savikeri village was an Inam village and those lands form the Patilki Watan of one Kadim Patil Channappagouda adopted son of Puttayyagouda; that the said Channappagouda died in 1937 without

any issues either male or female and therefore the Patilki family of Savikeri became extinguished and the properties were lapsed to the Government and the Government according to the practice in the Inam village, ought to have given those properties to the Plaintiff's father by levying full assessment and the Patilki right was entrusted to the village Inamdar and the property B mentioned in the plaint ought to have been given to his father and this being so, the Prant Officer Second Division, entered the name of the Defendant No. 1 under an illegal order dated 10-6-1937 holding the Defendant No. 1 as lawful heir of the deceased Channappagouda and the Defendant No. 1 began to claim the rights of Patilki and also in the lands and the Collector, District Dharwar, on the recommendation of the Prant Officer confirmed the order of the Prant Officer on 17-10-1939 and the Defendant No. 1 is not the legal heir to the family of Channappagouda and he was born to Channappagouda before Channappagouda was adopted to Savikeri Patilki family and the Defendant No. 1 belonged to the genitive family at Tallur and he has no interest what-so-ever in the Savikeri properties and therefore, this Plaintiff's adoptive father and this Plaintiff got a right in respect of those lapsed properties and therefore this suit is filed for a declaration that the Defendant No. 1 has no right what-so-ever in the suit properties and for possession, that the properties have lapsed to the Government, that the Prant Officer or the Collector had no right to pass an order in favour of Defendant No. 1 and they have also no right to give those properties to a stranger and the orders passed by the Prant Officer and the Collector are ultra vires and the Plaintiff has a right to ignore all those orders, that legally the Defendant No. 2 is in possession and he has been impleaded in this suit and a notice under the Civil Procedure Code is also served on Defendant No. 2 and the Collector of Dharwar has dismissed the appeal on 9-8-1949 and against that order, this Plaintiff has preferred an appeal to the Commissioner, Southern Division, on 23-9-1949 and therefore this suit is not barred by Revenue Jurisdiction Act and properties are lapsed to the -

Government and hence the suit for the reliefs mentioned above.

2. The Defendant No. 1 by his written statement ex.44 contends that the Plaintiff has not correctly given the name of the Defendant No. 1 and the name of the Defendant No. 1 is Hallappagouda Channappagouda Patil; that the allegation that the properties have lapsed is false; that Channappagouda was the full owner of the suit properties and after his death, this Defendant is enjoying those properties as his heir and therefore, the properties could not be lapsed and had not lapsed and the description of the property B mentioned in para 1 is not correct, that the allegations in para 2 of the plaint are false, that the allegation that Channappagouda died without male or female issues is false; that the deceased Channappagouda had also another son by name Virapangouda and that Virapangouda had been given in adoption to one family at Balihalli and he is enjoying those properties as owner and therefore the allegations that the Savikeri Patilki family and the Patilki right became extinguished are false and this Defendant is the heir to the deceased Channappagouda and after obtaining the consent of the proper authorities, he has been enjoying those properties and also the Patilki right and the Collector confirmed the order passed by the Prant Officer in 1937 and therefore the Plaintiff has no right to sue; that this Defendant was born to Channappagouda but not before the adoption as alleged by the Plaintiff and this Defendant was born to Channappagouda after the adoption and after the death of Channappagouda, he is enjoying all those properties as full owner, that the Plaintiff or his father had no interest what-so-ever and the orders passed by the Revenue Officers are not ultra vires and the Plaintiff's father and the Plaintiff were parties to those orders and therefore this suit is not maintainable without getting those orders set aside, that the properties are not the lapsed properties and even now they are the properties of the Patilki Watan; that the suit is barred by time, that the suit is barred by the Bombay Revenue Jurisdiction Act, that the Inam had been resumed by the Government even during the lifetime of the

Plaintiff's father and therefore whatever rights they had, have been extinguished and in case if the Court holds that he is not the heir to the deceased Channappagouda there are other heirs belonging to Channappagouda and therefore this Plaintiff has no right to sue and the suit should be dismissed and his costs awarded.

3. The Defendant No. 2 by its written statement ex. 47 contends that the plaint allegations are not admitted, that the Plaintiff has not given a valid and legal notice, that the suit is barred by Revenue Jurisdiction Act, that the suit is barred by law of limitation, that the suit is barred by estoppel and acquiescence, that the suit is barred by Res Judi ata and the Plaintiff's predecessor had once agitated the matter and an order was passed against which he had not appealed and therefore, he cannot re-agitate the matter once again, that the Plaintiff has unnecessarily impleaded this Defendant and hence compensatory costs should be awarded and it is not admitted that either the Plaintiff or his father had a right to the Watan property or to the Watan rights and the allegation that the Defendant No. 1 was born prior to the adoption of his father is not admitted and by the additional written statement ex.97 the Defendant No.2 has contended that the contents of the notice under section 80 are different from the contents of the plaint and the Plaintiff cannot claim possession or mesne profits and the Plaintiff's suit based on defective notice is not tenable and the plaintiff has no cause of action for possession or mesne profits and hence the suit should be dismissed with costs.

4. On these pleadings, the following issues have been framed at ex. 97 :-

1) Does Plaintiff prove that he is the Inamdar of the village Savikeri ?
2) Does Defendant No. 1 prove that he was born to Channappagouda after his adoption to Futtappagouda ?
3) Is the suit barred by the law of limitation ?
4) Is the notice under Section 80 legal and valid ?
5) Is the suit barred by Revenue Jurisdiction Act ?

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6) Is Plaintiff entitled to declaration and possession?

7) Is the suit barred by estoppel and acquiescence ?

7A) Does Defendant prove that the suit is barred by Res-Judicata ?

8) Does Plaintiff prove that he had a right to Watan property ?

9. Is Defendant No. 2 a necessary party ?

10. Whether the Defendant No. 2 is entitled to compensatory costs ?

11. What order ?

5. Findings : -

1 :- No. 2 :- Yes.

3 : - Only by adverse possession. 4:- No.

5 : - No. 6 : - No.

7 : - No. 7A :- No.

8 : - No. 9 : - Yes.

10 :- No. 11 : - As per final order.

Reasons.

6. This suit is instituted by the Plaintiff for possession of the suit properties alleging that the suit properties belonged to one Channappagouda Puttayyagouda and the said Channappagouda died without any heirs and he is the Inamdar of the village Savikeri in Taluka Hanagal and the Collector without any right and illegally has entered the name of the Defendant No.1 as a person entitled to those properties, that the order passed by the Collector is ultra vires and not binding on him and therefore he is entitled to possession of the suit properties. The village Savikeri in Hanagal Taluka is an Inam village and one Puttayyagouda Mallangouda was the Patil of that village. The said Puttayyagouda was in possession of the Patilki Watan lands and he was enjoying those properties till his death. That Puttayyagouda had, it appears, adopted one Channappagouda. That Channappagouda had married the daughter of Puttayyagouda before the adoption and after the marriage, this Puttayyagouda adopted his own son-in-law Channappagouda. The said Channappagouda had two sons by name Mallangouda

the present Defendant No. 1 and Virappagouda. According to the Plaintiff, these two sons of Channappagouda were born to Channappagouda before he was adopted to Puttayyagouda and after adoption the said Channappagouda had no issues. The question whether these two sons of Channappagouda were born before or after the adoption is in dispute. The said Puttayyagouda had given an application to the Prant Officer and had requested the Prant Officer to enter the name of Channappagouda alleging that he had taken Channappagouda in adoption. The Prant Officer recognized that adoption or rather recognised that Channappagouda as the adopted son of Puttayyagouda and issued an order to the Mamlatdar to enter the name of Channappagouda. That Channappagouda died on 3-1-1937 and thereafter the Mamlatdar submitted a report under his No. M.T.Ml. 67/4-6-1937 to the Assistant Collector and the Assistant Collector ordered under his No. M.S./P.151 dated 10-6-1937 to enter the name of the Defendant No. 1 against the suit property. Thereafter the Collector by his Order No.S.R. 43/17-10-1939 confirmed the order passed by the Assistant Collector. These facts are clear from a certified copy ex.130. The said Channappagouda, I have already shown above, had another son Virappagouda who was given in adoption to a person of Balehalli and one person challenged that adoption of Virappagouda and filed a suit No. 701 of 1932 . Vide ex. 129. In that suit, the Plaintiff had alleged that Virappagouda was born prior to the adoption of Channappagouda by Puttayyagouda and therefore that adoption was invalid and he was entitled to the properties in that suit. Ultimately, that suit was compromised and it was held that the adoption of Virappagouda was valid and he got certain properties in that suit. This question is some-what relevant in deciding the issues in this case and it will be discussed at the proper time. In that suit, the said Channappagouda had been examined as a witness on behalf of the Defendant Virappagouda and also one more witness was also examined to which I would refer later. After the death of Channappagouda the present Plaintiff's father, it appears, moved the Revenue Officers to give possession of the lands belonging to

Puttayyagouda and Channappagouda alleging that Channappagouda died without any issues either male or female and as he was an Inamdar of the said village, he was entitled to the properties. It appears that his application was turned down by the Revenue Officers. The Plaintiff's father died in the year 1942 and after that the present Plaintiff began to agitate the same matter once again. The Plaintiff's father had approached the Assistant Collector in the year 1937 and on 10-6-1937 the Assistant Collector passed an order a copy of which is produced at ex. 113 stating therein "The request of Nilakanth cannot be granted.. Patilki right of Service to be entered in the name of Mallangouda". It appears that the said Nilakanth has again applied to the Collector against that order passed by the Assistant Collector and the Collector informed that Nilakanth that the request of Nilakanth cannot be granted . Vide ex. 133. After the death of Nilakanth, this Plaintiff, it appears, was agitating the same matter and he had sent an application to the Commissioner and the Plaintiff has not proved the contents of that application. The Plaintiff has produced only an acknowledgment receipt signed by the Commissioner dated 14-10-1942. In the year 1947, the Plaintiff had applied to the Prant Officer by an application ex. 120 to enter his name and for possession of the lands belonging to Puttayyagouda and he had alleged therein that Channappagouda died on 3-1-1937 and he is the Inamdar of Savikeri village and all properties have lapsed and the same should be granted to him as Sheri property and the Prant Officer passed an order to the effect that the application is not tenable and the contention that the Defendant No.1 is not the heir to Channappagouda is untenable. Against that order, the Plaintiff preferred an appeal to the Collector vide ex.121 and the Collector also dismissed that appeal by an order dated 9-8-1949. Vide ex. 131. The Plaintiff, thereafter, preferred a revision application to the Commissioner against the order passed by the Collector and the Commissioner informed the Plaintiff that the Defendant No.1 was recognized as S. H. W. Patil as far back as in 1937 and Defendent No. 1 was born to Channappagouda and therefore the matter could not be reconsidered again and therefore his

application was turned down by the Commissioner Vide ex. 138. This order came to be passed on 30-3-1950 but before the Commissioner passed the order on the revision application, the Plaintiff served a notice on the Collector of Dharwar on 10-6-1949 and filed the suit on the same day in this court. The copy of the notice under section 80 of the Civil Procedure Code dated 10-6-1949 is produced at ex. 110. The Collector acknowledged the notice on 17-6-1949. Vide Ex. 111.

7. The Plaintiff now alleges that the properties belonged to Channappagouda and the said Channappagouda died without any issues and after the death of Channappagouda the property has lapsed and according to the practice prevailing in the village, he was entitled to the possession of the properties belonging to Channappagouda and the Revenue Officers have wrongly and illegally entered the name of the Defendant No. 1 against the said property and therefore, he is entitled to possession of the property. He also alleges that all the orders passed by the Revenue Officers were ultra vires. The Defendants contend that the Defendant No. 1 was born to Channappagouda before his adoption and the allegations to the contrary are all denied and the Plaintiff is not entitled to possession and the notice served by the Plaintiff is not legal and valid, that the suit is barred by limitation, estoppel and acquiescence and res judicata and Revenue Jurisdiction Act and the Defendant No. 2 the State of Bombay further contends that it is not a necessary party to the suit and the Plaintiff is not entitled to any relief. It is not disputed that the village Savikeri is an Inam village and the properties originally belonged to one Puttayyagouda Hullangouda Patil and these properties are Patilki Watan properties. It is also not disputed that Puttayyagouda had adopted one Channappagouda but the Plaintiff has only disputed the date of the adoption of Channappagouda. That fact is material to show that the present Defendant No. 1 who was the natural son of Puttayyagouda was born either after or before the adoption of Channappagouda to Puttayyagouda. I will have to see now whether the Plaintiff is the Inamdar of the village Savikeri. The Plaintiff

Ramachandra ex. 124 has stated that Savikeri village is an Inam village and his father Nilakanth was the Inamdar of the entire village and after his death, he is the Inamdar of that village and in para 6 of his deposition, he has stated that he cannot say in what year this Savikeri village was given in Inam and he does not kno know why and for what purpose the village was given in Inam and he does not know what terms and conditions were imposed by the Government when Inam was given and one Govind Gurunath is the Sanad holder and the Government had taken back the Sanad from Govind and he does not know whether his father's name appeared as Inamdar in the Sanad and he has not seen the term or the condition in the Sanad that if any Watandar dies without an issue that property should vest in the Inamdar and the watan in question is the Kadim Watan and he recovers the judi from all Kadim Watandars. The Plaintiff has produced the certified copy of the Register of alienated villages kept under Section 53 of the Bombay Land Revenue Code at ex. 139. In that copy, these lands are shown but it does not show that this family of the Plaintiff had any interest in the said property. The name of the Plaintiff or his father is not shown as the person interested in this Watan property. Moreover, the Plaintiff has not produced any evidence also in this case to show that he was recovering the judi in respect of these lands and it was not difficult for the Plaintiff to produce the necessary documents to prove that he was the Inamdar of the village. It is true that the Defendants have not taken up such a contention but at the same time it is for the Plaintiff to prove that he was the Inamdar of the said village Savikeri and that he was entitled to possession of the lands after the death of Channappagouda. Except the bare word of the Plaintiff there is nothing to show that this Plaintiff was the Inamdar of the village Savikeri and there is also no evidence to show that if the watan property lapses, the properties vest in the Inamdar. Assuming that the properties do vest in the Inamdar after the watan lapses still it is for this Plaintiff to show as to how he can claim the property and it is for him to show that he was the Inamdar of the said village. I, therefore, hold that the Plaintiff has failed to prove that he was the Inamdar of this village Savikeri.

8. The next question that arises for consideration is whether this Defendant No. 1 was born to Channappagouda before or after Channappagouda was adopted to Puttayyagouda. Therefore, I have to decide the point as to whether Channappagouda was adopted before the Defendant No. 1 was born. The Plaintiff has stated that Channappagouda was adopted to Puttayyagouda in the year 1914 but he has admitted in his deposition that he has no personal knowledge about the adoption. The adoption-deed executed by Puttayyagouda in favour of Channappagouda is produced at ex.122. The stamp for the adoption-deed was purchased in the year 1912 by Puttayyagouda and in that adoption-deed, it is stated that Puttayyagouda had adopted this Channappagouda then only and this adoption-deed could not be executed and on account of some difficulties it was not executed and therefore he has executed it today. According to the Defendant No. 1, this Channappagouda was adopted in the year 1905 by Puttayyagouda. The Defendant No. 1 has stated that his father Channappagouda was adopted in the year 1905. But he has no personal knowledge about it because this Defendant No. 1 was born in the year 1906. The Defendant also has not adduced any oral - evidence to show that the adoption took place in the year 1905. But he has produced certain documents to prove that Channappagouda was adopted in the year 1905. He has produced his own Birth Extract (ex.112) which shows that this Defendant No. 1 was described as the son of Channappagouda grandfather Puttayyagouda and this entry was made by Puttayyagouda himself in the year 1906. If as a matter of fact, this Puttayyagouda had not adopted this Channappagouda he would never have described himself as the grandfather of this Defendant No. 1.dNo doubt this Puttayyagouda was the grandfather of this Defendant No. 1 even from the maternal side because the mother of - Defendant No. 1 i.e. the wife of Channappagouda was the daughter of Puttayyagouda. But it must be noted that in the Village Records, the names of the father and the paternal grand-father are required to be shown and not the name of the maternal grandfather. This Defendant No. 1 had a brother by name Virappagouda Alias Chanavirappa and the Birth Extract of that Virappagouda is produced in this case at ex. 119. Therein, the second son of Channappagouda was -

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described as Chanavirappa father Channappagouda grand-father Chanabasappa Naik of Tallur and this entry has been made by Shivappa Naik Patil of Tallur in the year 1909. This Virappa Naik was born on 15-2-1909. It is argued by the Plaintiff that if this Virappa was born to Channappagouda after the adoption which is said to have taken place in the year 1905 then the name of the grand-father would have been shown as Puttayyagouda. But on the other hand, grandfather's name is shown as Chanbasappa Naik and this Shivappa Naik who made the entry was the brother of Channappagouda and this fact is admitted by the Defendant No. 1. But there is absolutely no evidence to show under what circumstances this entry came to be made. But there is some documentary evidence also to show that this entry in ex. 119 is not correct. This Virappa had been given in adoption to a person at Balehalli and one Basalingan-gouda filed a suit (O. L. C. suit No. 701/1932) in Haveri Civil Judge's Court for a declaration that the adoption of Virappagouda was bad and he was entitled to the properties of the person to whom this Virappagouda is said to have been adopted. He had alleged that this Virappagouda son of Channappagouda had not been adopted to that person of Balehalli and at the date of the adoption there was no person to give this Virappagouda in adoption and as such, that adoption was invalid. Ultimately, that suit was compromised and it was held therein that this Virappagouda is adopted to one Chanabasangouda of Balehalli and he was entitled to certain properties. These facts could be seen from the certified copy of the decree ex. 129. In that case, this Channappagouda was examined as a witness and he has stated in his deposition that his adoption took place in the year 1905. It is admitted that this Channappagouda is now dead and this attatement was made in the year 1933 long before this dispute had arisen. Similarly, in that case, one witness Ningappa was also examined and he has stated that the Defendant No. 1 Mallayyagouda was not born at the date of the adoption of Channap agouda by Puttayyagouda and he was also present at the time of the adoption of Channappagouda by Puttayyagouda. It is also in evidence that this witness is also dead and therefore the statements of Ningappa

and Channappagouda are admissible under section 32 of the Indian Evidence Act and are relevant to show or prove the date of the adoption of Channappagouda. If Channappagouda had not been adopted in the year 1905 then a decree would not have been passed in L.C.suit No. 701/1932. It is true that the adoption-deed was passed in the year 1914 but it appears that Puttayyagouda was old and probably on account of his oldage he could not execute the adoption-deed though in fact as now proved by the evidence that Puttayyagouda had adopted this Channappagouda in the year 1905. It is argued that Channappagouda was interested in making that statement in the year 1933 in order to establish the adoption of Virappa to Chanabasangouda of Balehalli but then it is not shown as to why Ningappa should make that statement in the year 1933 in that suit No. 701/1932. This would also show that the entry made in ex. 119 is not correct. Moreover, it is also not shown as to why Puttayyagouda should make a false recital in the Birth Register as to the birth of Defendant No. 1. Besides this, the Revenue Officers have right from 1937 held that this Defendant No. 1 was born to Channappagouda after Channappagouda was adopted to Puttayyagouda. I am, therefore, not inclined to accept the entry in ex. 119 as true and correct. If as a matter of fact this Puttayyagouda had not adopted Channappagouda in the year 1905 and if this Defendant No. 1 had been born to Channappagouda before the adoption of Channappagouda then this Plaintiff or his father could have immediately filed a suit to recover the properties from the Defendant No. 1 because the Revenue Officers ordered that the name of the Defendant No. 1 should be entered against the suit Watan properties in the year 1937. The Plaintiff or his father have kept quiet for nearly 12 years after the entry was made by the Revenue Officers and this conduct shows that the adoption must have taken place in the year 1905. It is true that the Plaintiff or his father have been merely filing or sending the applications to the Revenue Officers time and again but in the year 1938 only the Plaintiff's father knew that he had failed in the proceedings before the Revenue Officers and he would have rushed

to the Civil Court for getting a declaration that this Defendant No. 1 was not entitled to retain the properties and for possession of those properties from the Defendant No. 1. I, therefore, hold that Defendant No. 1 was born to Channappagouda after Channappagouda was adopted by Puttayyagouda.

8. It is contended by the Defendants that the suit is barred by limitation. The Defendant No. 2 has contended that the suit is barred by Article 14 of the Indian Limitation Act. But since this suit is for a declaration of title and for possession of the suit property, Article 14 does not apply. It is argued that the Plaintiff has not obtained a decree within 6 years of the entry of the name of the Defendant No. 1 by Revenue Officers as stated in Section 36 of the Watan Act. But that Section only says that if a decree is produced within 6 years then the Collector should remove the name of the person in whose name the entry has been made. But it does not say that the Collector is not empowered to remove the name after six years because the section does not enact that after the expiry of 6 years, the entry shall be final or binding. It only says that the Collector is bound to amend if the decree is produced within 6 years and after the lapse of six years, it becomes a matter of discretion with the Collector. Therefore, I do not think that this suit is also barred under Section 36 of the Watan Act. It is further argued that the suit is barred and the Plaintiff is not entitled to possession because the Defendant No. 1 is in possession for more than 12 years. It is in evidence that Channappagouda died on ~~At~~ 3-1-1937 w vide ex.114 and the name of the Defendant No. 1 was entered on 11-1-1937 against the suit properties. Thereafter the said entry was confirmed and the name of the Defendant No. 1 was entered as the heir of the deceased Channappagouda by the Assistant Collector on 10-6-1937. The Plaintiff also has admitted that he is not in possession of the properties since the death of Channappagouda. It is also admitted that this Defendant No. 1 is in possession of the properties since the death of Channappagouda which took place on 3-1-1937 and this suit is now filed on 10-6-1949 and

and therefore the Defendant No. 1 is enjoying the properties for 12 years, 5 months and 8 days before the suit and therefore the suit is barred by-law of Limitation. The Defendant No. 1 has even become owner of the suit properties by adverse possession and therefore the Plaintiff is not entitled to possession of the suit properties and he has also lost his title to the suit - properties by adverse possession.

10. It is contended that this suit is also barred by Revenue Jurisdiction Act but this suit being a suit for a - declaration of title and possession, the suit is not barred by Revenue Jurisdiction Act.

11. It is contended by the Defendant No. 2 that the suit is barred by estoppel, acquiescence and res judicata. The Defendant No. 2 has not shown as to how the suit is barred by estoppel and acquiescence and with regard to the question of res-judicata, it is not shown by the Defendant No. 2 that there was any previous suit with respect to the same properties between the same parties. It is, however, argued that a decision in Revenue Court also operates as res judicata in a subsequent suit. Reliance is placed on Mulla's Civil Procedure Code, Section 11 Page 76, 12th Edition, to prove that the decision in a Revenue Court operates as res judicata in the subsequent suit. But if we read the - commentary it will be clear that the Revenue Court must give a finding on the question of title. Moreover, it must be shown by the Defendant No. 2 that the order passed by the Revenue Authorities has the force of the decree and it is not shown by the Defendant No. 2 and therefore, I hold that the suit is also not barred by res judicata.

12. It is contended by the Defendant No.2 that the notice given under Section 80 of the Civil Procedure Code is not valid. The Plaintiff had issued a notice to the Collector under section 80 of the Civil Procedure Code Vide ex.110. The notice is dated 10-6-1949 and the Collector acknowledged the notice on 17-6-1949 vide ex.111. But the suit is filed on 10-6-1949. But under Section 89 of the Civil Procedure Code, the notice will

have to be given to the Collector at least two months prior to the filing of the suit and this has not been done and therefore the notice is bad. Moreover, the notice served by the Plaintiff on the Defendant No. 2 was with regard to declaration and injunct ion and not for possession and the suit is now filed for declarat ion and possession. The notice is also bad on that account.

13. The Defendant No. 2 is a necessary party to th suit inasmuch as the Defendant No. 1's name was entered at the instance of the Revenue Officers against the suit properties. Therefore, the Plaintiff is not entitled to declaration and possession and the Plaintiff has therefore failed to prove that he has a right to recover the watan properties. The Defendant No. 2 has claimed compensatory costs from the Plaintiff but it i not shown by the Defendant that the suit is false and vexatious. I, therefore, negative that claim and hold that the Defendant No. 2 is not entitled to compensatory costs. Under the circum- stances, I have to dismiss the suit. I, therefore, pass the following order.

O r d e r .

The suit is dismissed. The Plaintiff to pay the costs of the Defendants Nos. 1 and 2 ~~and~~ in separate sets and th Plaintiff to bear his own costs.

30th September 1955. ... Sd/- B. A. Chaugule.
Civil Judge, Senior Divisio

" True Copy "

Typed by

Compared by

Clerk of the Court.

Sectioner.

D. 7 NOV 15 E.

L.C. Suit No. 248
1949

In the Court of the Civil Judge (S. Dn),
Hubli.

Ex-No. 144

Decree in original suit—
(O: 20 R. 6-7.)

Plff:- Ramachandra Neelkantha
Deshpande of Savikeri
Taluka Hangal

THE SECRE... GOVT. MENT,
L C
33141
E
8-11-55

Vs.

Defts: (1) Mallappa Naik Channappa-
Naik Naikar of Savikeri
(2) The Province of Bombay
(3) Veeranagouda

Rs. 5150/- for jurisdiction

Bill of costs

Costs of Deft No. 2.

Stamps on Exs 19-21-23-27-29-31-34-37-39-42-46-105-120 and 121	8	12	-
Pleader's fees on Rs 5150/- with charge	241	4	-
	250	-	-
disallowed costs	1	4	-
	248	12	-

Decided on 30-9-55

Sd- B.A. Chougule
C.J.-S.D. Hubli
17-10-55

"True Copy"
B.R. Mathad
S.G.P. Hubli

35
535

Suits:

Dharwar.

For a declaration that the suit lands and the patilki rights have lapsed to Government and the plaintiff is entitled to claim them and for consequential injunction.

...

Government of Bombay.
Legal Department,
Resolution No. 25317/E
Sachivalaya, Bombay,
11th November, 1955.

Read Government Resolution, Legal Department No. 17730 dated the 13th December 1950.

In the Court of the Civil Judge (Senior Division), Dharwar.	Letter from the
Civil Suit No. 248 of 1949,	
Ramchandra Nilkanth Deshpande ... Plaintiff	
vs.	
The State of Bombay and another .. Defendant	

Sub-Government Pleader, Hubli No. 144 dated the 3rd October 1955, stating that the suit noted in the margin was decided by the Civil Judge (Senior Division) Hubli on the 30th September 1955, when the following order was passed:

"The suit is dismissed. The plaintiff to pay the costs of the Defendants Nos. 1 and 2 in seperate sets and the Plaintiff to bear his own."

Letter from the Sub-Government Pleader, Hubli No. 157 dated the 4th November 1955, forwarding uncertified copies of the judgment and decree.

Resolution: The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

10/11

D. P. Shikhare,
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Dhrarwar,
The District Government Pleader, Dharwar,
The Sub-Government Pleader, Hubli.

Please 10/11

11/11

CDS/9/11

Submitted for signature

9/11 Supdt. 10/11 D.S. (Civil).

36

Submitted

25/6/11 S Dharwar 1/51

12/11

Sitabir 12/11

S Dharwar 1/51
16/11/55